In the Supreme Court of the United States.

OCTOBER TERM, 1904.

JOHN A. BENSON, APPELLANT,
v.
WILLIAM HENKEL, UNITED STATES marshal for the southern district of New York. } No. 308.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHEN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF APPELLEE.

December 31, 1903, John A. Benson was indicted by a grand jury in the supreme court of the District of Columbia for violation of certain of the provisions of section 5451 of the Revised Statutes. Said section is as follows:

> Every person who promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or

office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be punished as prescribed in the preceding section.

In the first three counts of the indictment it is alleged, in substance, that the defendant during the period specified was engaged with one Frederick A. Hyde, at San Francisco, California, in the business of unlawfully obtaining from the United States, and appropriating to their own use, profit, gain and benefit the public lands of the United States outside of forest reserves, in exchange for school lands of the States of California and Oregon within forest reserves, obtained from said States by defendant and said Hyde in a manner, as it was charged, contrary to the laws of said States, and by means of a false and fraudulent practice the details of which are set forth in the indictment; that an investigation by special agents of the land department, of the unlawful transactions so charged, was ordered by the Secretary of the Interior; that such investigation

was begun and carried on by said special agents, who were to report to the Secretary of the Interior, and whose reports would be for the exclusive consideration and use of the proper officers of the Department of the Interior and of the General Land Office, and would be the official and secret reports of said special agents, the contents whereof should not be revealed to any unofficial person; that during the said period Woodford D. Harlan was a person acting for the United States in an official function, under the Department of the Interior, that is to say, as chief of the special service division of the General Land Office, whose duty it was to consider and act upon all reports of special agents pertaining to alleged violations of the laws relating to the disposal of the public lands, and to preserve and keep for the exclusive consideration and use of the proper officers of the land department, all information and official reports coming to him by virtue of his official position; and that during the said period, the defendant unlawfully gave to Harlan, in the District of Columbia, certain sums of money with intent to induce him to do an act in violation of his lawful duty, that is to say, to reveal to defendant the contents of the reports of said special agents, pertaining to said investigation.

The fourth, fifth and sixth counts of the indictment are based upon the same payments of money by defendant to Harlan, mentioned in the first, second and third counts, and upon the same facts and circum-

stances set forth in those counts, except that Harlan's official position and duties are somewhat differently designated and described.

The seventh count is based upon a different payment of money by defendant to Harlan, in the District of Columbia, with like intent to induce him to reveal to defendant the contents of the reports of said special agents pertaining to said investigation, in violation of his lawful duty.

The eighth count is based upon the payment of money by defendant, in the District of Columbia, to one William E. Valk, an officer of the United States, under the Department of the Interior, whose official position and duties are fully set forth and described, with intent to induce said Valk to reveal to defendant the contents of the reports of said special agents pertaining to said investigation, in violation of his lawful duty.

The defendant was arrested in the southern district of the State of New York upon a warrant issued by a United States commissioner on the sworn complaint of an officer of the United States, with a copy of the indictment attached to and made a part of the complaint, and proceedings were had under section 1014 of the Revised Statutes for his removal to the District of Columbia for trial. The defendant's identity being admitted (p. 36 of the record), the Government introduced a duly certified copy of the indictment attached to the complaint, and other evidence was also introduced (record, pp. 32–200). One witness was examined on behalf of defendant (record, p. 200), but no

evidence was offered to controvert in any manner the allegations of the indictment.

May 4, 1904, the commissioner committed the defendant to the custody of the United States marshal until a warrant for his removal should be issued by the district judge (record, p. 33). He thereupon filed his petition in the circuit court for the southern district of New York asking that writs of *habeas corpus* and *certiorari* be granted him, on the alleged grounds that his arrest, commitment, detention and restraint were illegal and without due process of law, and were contrary to and in violation of the Constitution (record, pp. 1–2). The writs were accordingly granted, but upon returns thereto by the marshal and the commissioner, the circuit court, on May 31, 1904, dismissed the writ of *habeas corpus*, and remanded the defendant to the custody of the marshal to await the action of the district judge (record, pp. 204–207, 130 Fed. Rep., 486).

The defendant thereupon filed his petition of appeal to this court, which was allowed (record, pp. 209–210).

Stripped of unnecessary verbiage, the contentions presented in the assignments of error are, in effect, that the circuit court erred in holding that the question of the sufficiency of the indictment is not a matter of inquiry in removal proceedings, but is to be determined by the court in which it was found; in not holding the indictment insufficient because not charging an offense against the United States; in not hold-

ing that there is no evidence of probable cause sufficient to warrant the commitment of the defendant; in not holding that the offenses alleged in the indictment are shown by the evidence to have been committed in the State of California, and that under section 2, Article III, of the Constitution, and Article VI of the amendments, the defendant is entitled to be tried in that State; and in not holding that there is no authority under section 1014 of the Revised Statutes to remove defendant to the District of Columbia.

These contentions are merely colorable and are wholly untenable. That technical objections to an indictment are to be determined by the court in which it was found, and are not matters of inquiry in removal proceedings, is settled law (*Greene* v. *Henkel*, 183 U. S., 249, 261, 262; *Beavers* v. *Henkel*, 194 U. S., 73, 87). In *Greene* v. *Henkel* it was held that the granting of an order of removal, under section 1014, is not to be regarded as adjudging the sufficiency of the indictment in law as against any objections which the defendant may make, and that the place to set up the invalidity of the indictment is the court in which it was found. In *Beavers* v. *Henkel* it was said:

> * * * so far as respects technical objections, the sufficiency of the indictment is to be determined by the court in which it was found and is not a matter of inquiry in removal proceedings.

It is also settled that the writ of *habeas corpus* can not be used as a writ of error to review the action of a commissioner or other officer under section 1014, either

upon questions of evidence, or upon questions of law relating to the sufficiency of the indictment. In *Greene* v. *Henkel*, *supra* (p. 261), it was held that jurisdiction upon the writ of *habeas corpus* in removal proceedings does not extend to an examination of the evidence upon the merits; and in *Horner* v. *United States* (143 U. S., 570, 577, 578), where the question was whether the scheme described in a certain circular was a lottery, and whether the depositing by Horner of such circular in the mail was an offense within the meaning of section 3894 of the Revised Statutes, as amended by the act of September, 19, 1890 (26 Stat., 465), this court said:

> But we are of opinion that that question ought not to be reviewed by us on this appeal. The point raised is that the Austrian bond scheme was not a lottery. That is a question properly triable by the court in which an indictment may be found against Horner. * * * It is not proper for this court, on this appeal, nor was it proper for the circuit court, on the writ of *habeas corpus*, to determine the question whether the scheme was a lottery. * * * It is not for this court to determine that question in advance.

In *Ex parte Rickelt* (61 Fed. Rep., 203) the question was whether the facts developed before the commissioner were sufficient to constitute the offense with which the prisoner was charged. The circuit court said:

> That is a mere question of law, the decision of which is in the first instance committed by section 1014, Revised Statutes, to the jurisdic-

> tion of the United States commissioner before whom the preliminary examination is had. * * * The writ of *habeas corpus* can not be used as a writ of error to review the action of the United States commissioner within his jurisdiction.

See also *Ex parte Parks* (93 U. S., 18, 23); *Ex parte Yarbrough* (110 U. S., 651, 653); and *Stevens* v. *Fuller* (136 U. S., 468, 477).

In *Beavers* v. *Henkel*, *supra* (p. 85), it was held:

> Within the spirit of the rule of giving full effect to the records and judicial proceedings of other courts, an indictment, found by the proper grand jury, should be accepted everywhere through the United States as at least *prima facie* evidence of the existence of probable cause.

Prior to that decision the Government introduced certain evidence before the commissioner in this case. The evidence does not contradict the indictment, as claimed by appellant, but clearly supports it.

It is contended that section 5451 contemplates the violation only of duties specifically required by law, and that the indictment is void because not averring that the duties of Harlan and Valk, which defendants sought to induce them to violate, were prescribed by statute. There is nothing in this contention. In *United States* v. *McDaniel* (7 Pet., 1, 14) this court, speaking of the duties of officers and employees acting under and by authority of a department of the Government, said:

> A practical knowledge of the action of any one of the great departments of the Govern-

> ment must convince every person that the head of a department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by the law; but it does not follow that he must show a *statutory provision* for every thing he does. No government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of government would evince a most unpardonable ignorance on the subject. Whilst the great outlines of its movements may be marked out, and limitations imposed on the exercise of its powers, there are numberless things which must be done, that can neither be anticipated nor defined, and which are essential to the proper action of the Government. Hence, of necessity, usages have been established in every department of the Government, which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits.

In the case of *Tyner et al* v. *United States* (Wash. Law Rep., vol. 32, 258) the court of appeals of the District of Columbia quoted from and followed the McDaniel case. It also said:

> Duties imposed by law or regulation promulgated thereunder, and not inconsistent therewith, require no proof. Additional duties that may have been imposed from time to time, by order or direction in the ordinary course of administration of the business of the department, must be proved like other facts. But the

> direct allegation of the fact in the indictment is all that is required; it is not necessary to set forth the evidence or to negative any theory of the defense. (*Stokes* v. *United States*, 157 U. S., 187, 191; *Evans* v. *United States*, 153 U. S., 584, 594.)

See also sections 441, 453, and 2478, Revised Statutes, and *Knight* v. *Land Association*, 142 U. S., 161, 177, 181–182; *Caha* v. *United States*, 152 U. S., 211, 221–222; *Cosmos Exploration Company* v. *Gray Eagle Oil Company*, 190 U. S., 301, 309.

There is nothing in the contention that under the Constitution the defendant is entitled to be tried in the State of California. The several briberies mentioned in the indictment are charged to have been committed in the District of Columbia. While as to each of the first six counts the evidence shows that the money paid by defendant was sent by mail from San Francisco, California (record, pp. 97–99), there can be no question that the payments were made in the District of Columbia, the place where the letters containing the money were received by the person to whom they were addressed. (Rev. Stat., sec. 731; *In re Palliser*, 136 U. S., 257, 262, and authorities cited.) As to the seventh and eighth counts, both the defendant and the person to whom the money was paid were actually in the District of Columbia at the time of payment (record, pp. 101–104, 170–171). Therefore, should the district judge grant an order of removal in this case, no constitutional rights of the defendant would be in anywise taken from him.

This disposes of all matters presented by the appeal, except the question of authority under section 1014 of the Revised Statutes, to remove defendant to the District of Columbia for trial. By said section provision is made that an offender may be arrested in any State where he may be found, and imprisoned or bailed, as the case may be, "for trial before such court of the United States as by law has cognizance of the offense;" and that when imprisoned (in default of bail) in a district other than the one in which the offense is to be tried he shall be, by order of the judge of such district, removed to the district where the trial is to be had.

It is contended that the District of Columbia is not a *judicial* district, and therefore not a "district" within the meaning of the statute under consideration. Manifestly, the important and controlling provision of the statute is that the offender shall be arrested and imprisoned, if not bailed, "for trial before such court as by law has cognizance of the offense." The later provision prescribes the means whereby the offender is to be removed to the jurisdiction where the trial is to be had. The term "district" is clearly used in the sense of denoting the jurisdiction or place of trial.

Congress has declared the supreme court of the District of Columbia to be "a court of the United States," and has directed that crimes committed in the District shall be tried in such court. (See sections 61 and 83 of the new code of the District of Columbia.) It is therefore clearly such court of the United States as by law has cognizance of the offense charged in this indictment, within the meaning of said section 1014.

Courts of general jurisdiction in the District of Columbia have always been regarded as courts of the United States, even prior to the enactment of the new code. See *Moss* v. *United States* (Wash. Law Rep., vol. 32, pp. 342–343); *Embry* v. *Palmer* (107 U. S., 3, 9–10); *Phillips* v. *Negley* (117 U. S., 665, 674–675).

By section 1, chapter 39, Compiled Statutes of the District of Columbia (1894, p. 337) it is provided that—

> The Constitution and all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the District as elsewhere within the United States.

By section 24, chapter 35, Compiled Statutes of the District of Columbia (p. 296, act of June 22, 1874, 18 Stats., 193), it is declared that—

> The provisions of the thirty-third section of the judiciary act of seventeen hundred and eighty-nine shall apply to courts created by act of Congress in the District of Columbia.

Among the provisions of the judiciary act here referred to are those contained in said section 1014 of the Revised Statutes.

By section 1 of the new code of the District of Columbia it is declared that—

> * * * all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of

this act shall remain in force except in so far as the same are inconsistent with, or are replaced by, some provision of this code.

Clearly this legislation makes section 1014 applicable to the District of Columbia as well as to other parts of the United States. It is a general law of the United States, not locally inapplicable in the District of Columbia, and was, by section 24, chapter 35, of the Compiled Statutes of the District, specially declared to apply to courts created by act of Congress in the District; and section 24 has not been "replaced" by any provision of the new code.

In *United States* v. *Haskins* (3 Sawy., 262; Fed. Cas., vol. 26, No. 15,322) the United States district court of California held that for a Federal offense committed in the Territory of Utah, the offender may be arrested in any district of the United States and removed to the Territory for trial if the Territorial courts have cognizance of the offense, and that the Territorial courts are "courts of the United States," as that designation is applied in section 33 of the judiciary act (section 1014 of the Revised Statutes).

In the case of *Burton* v. *United States* (not yet reported) it seems to have been taken for granted by this court that the term "district," used in Article VI of the amendments to the Constitution providing for trial of a person charged with crime by a jury of the State and district in which the crime was committed, and in section 731 of the Revised Statutes providing that offenses begun in one "judicial circuit" (meaning

judicial district, *Horner* v. *United States*, 142 U. S., 207, 212) and completed in another, may be tried and punished in either district, was intended to embrace the District of Columbia as well as other districts of the United States; or at least that in matters of venue in criminal cases the term "district" is applicable interchangeably to the District of Columbia and other districts of the United States.

The *Dana case* (68 Fed. Rep., 886), relied on by appellant, does not support his contention. The sole or real ground for the refusal of an order of removal in that case was that *libel*, the offense there charged, did not belong to the class of offenses contemplated by said section 1014. It was not held that the section is inapplicable to the District of Columbia as to offenses like the one here under consideration, created under the general legislation of Congress, as to which removals may be had as between the different Federal judicial districts of the country. Upon this question the court specifically declined to express an opinion (p. 904).

Moreover, it is a settled rule of statutory construction that all laws must be construed, if possible, to prevent absurd or mischievous results. (Maxwell on Interpretation of Statutes, p. 179; Sutherland on Statutory Construction, secs. 323, 324; *Lau Ow Bew* v. *United States*, 144 U. S., 47, 59.) The construction here contended for, if adopted, would be both absurd and mischievous. The result would be that all offenders against the laws of the United States, in the Dis-

trict of Columbia, could secure absolute immunity from punishment for their crimes, simply by departing and remaining without the bounds of the District. It would make the whole United States outside the District of Columbia an asylum for fugitives from the administration of justice within the District. This would be a sufficient reason for rejecting the construction, if there were no other.

It is submitted that the decision of the circuit court dismissing the writ of *habeas corpus* should be affirmed.

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